

Pupil Promotion and Retention

AB 1626 (Chapter 742, Statutes of 1998)

Mandatory Summer School: Required Intensive Instructional Programs

AB 1639 (Chapter 743, Statutes of 1998)

Summer School Funding

SB 1370 (Chapter 942, Statutes of 1998)

Information Packet



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PUPIL PROMOTION AND RETENTION INFORMATION PACKET

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I. Introduction

This packet was developed to assist you in planning for implementation of AB 1626, AB 1639, and SB 1370 regarding pupil promotion and retention. It includes an explanation of the law, guidelines for planning, and responses to frequently asked questions, to the extent that they can be answered at this time.

The focus of the new pupil promotion and retention legislation is to improve student learning and support students who are at risk of failure. The funding available under this program offers educators an opportunity to rethink how they can provide supplemental services and additional help for those students who are retained, at risk of being retained, or have low scores in mathematics, reading, or written expression.

The final versions of the three pieces of legislation were drafted during a short period of time at the end of the 1997-98 legislative session. As a result, the legislation may not answer all the questions that will arise about policy development and implementation. While some answers will be concrete, others will refer to issues that must be resolved at the local level.

This packet of information provides as much information as the Department has at this time. CDE will keep you informed of any changes in the requirements through future memos and its website <<http://www.cde.ca.gov/ppr>>. The Department plans to add information and further resources to the website as these items become available.

II. Pupil Promotion and Retention Legislation

A. Description

AB 1626 (Wayne), Chapter 742, Statutes of 1998, “Pupil Promotion and Retention,” was signed by the Governor September 22, 1998, and requires the governing board of each school district and each county board of education to approve a policy regarding the promotion and retention of pupils. The policy must provide for the identification of pupils who should be retained or who are at risk of being retained. The legislation also requires the Superintendent of Public Instruction to recommend and the State Board of Education to adopt minimum levels of pupil performance on STAR achievement tests (pursuant to Education Code § 60640 and following) in reading, English language arts, and mathematics for grade level promotion. The provisions of this legislation become operative on January 1, 1999.

AB 1639 (Sweeney), Chapter 743, Statutes of 1998, “Mandatory Summer School: Required Intensive Instructional Programs,” was signed by the Governor on September 22, 1998, and requires school districts to offer direct, systematic, and intensive supplemental instruction to pupils enrolled in grades 2-9 who have been retained under the policies set forth by the local governing board as required by AB 1626. Districts may also provide supplementary instruction to pupils in grades 2-6 recommended for retention or at risk of retention or with low STAR scores in mathematics, reading, or written expression. The instructional services may be provided through summer school, after-school, Saturday or intersession instruction or any combination of these options. AB 1639 specifies the funding formulas for the allocation of the \$75 million appropriated in SB 1370 and specifies the school district funding cap for core summer school. It is an urgency statute and took effect immediately upon passage (September 23, 1998).

SB 1370 (Polanco), Chapter 942, Statutes of 1998, “Summer School Funding,” was signed by the Governor on September 28, 1998. This legislation appropriates (1) \$75 million for supplemental instruction for retained pupils in grades 2-9 and for pupils recommended for or at risk of retention or with low STAR scores in grades 2-6 and (2) \$30 million to fund remedial instruction to pupils in grades 7-9 who have been retained or are at risk of retention. (The bill also includes \$94.1 million to fund enrollment growth and cost-of-living adjustments (COLAs) for categorical programs funded in the mega item.) In addition, SB 1370 establishes new statewide funding priorities for the core summer school program. It is an urgency statute and took effect immediately upon passage (September 29, 1998).

B. Key Elements of AB 1626, AB 1639, and SB 1370

This section summarizes the key elements of the requirements of AB 1626, AB 1639, and SB 1370.

Key Elements of AB 1626, Pupil Promotion and Retention

Key Elements	Education Code Section
<p>I. Local Policy on Pupil Promotion and Retention In addition to existing local policies for pupil retention and promotion (adopted pursuant to Education Code § 48070), the governing board of each school district and each county board of education shall approve a policy regarding the promotion and retention of pupils between the following grades:</p> <ol style="list-style-type: none"> (1) Second grade and third grade. (2) Third grade and fourth grade. (3) Fourth grade and fifth grade. (4) The end of the intermediate grades and the beginning of middle school grades. (5) The end of middle school grades and the beginning of high school. <ul style="list-style-type: none"> • The policy shall base the identification of pupils “(1) Between second grade and third grade” and “(2) Between third grade and fourth grade” primarily on the basis of the pupils’ levels of proficiency in reading. • The policy shall base the identification of pupils “(3) Between fourth grade and fifth grade,” “(4) Between the end of the intermediate grades and the beginning of middle school grades,” and “(5) Between the end of middle school grades and the beginning of high school” primarily on the basis of the pupils’ levels of proficiency in reading, English language arts, and mathematics. 	<p>48070.5 (a)</p> <p>48070.5 (c)</p>
<p>II. Minimum Levels of Pupil Performance on STAR The Superintendent of Public Instruction shall recommend and the State Board of Education shall adopt the levels of pupil performance for the achievement tests administered under the STAR Program (Education Code §§ 60640-60647) in reading, English language arts, and mathematics. The performance levels shall be the minimum levels required for satisfactory performance in the next grade and shall be adopted only after the STAR tests have been aligned (pursuant to Education Code § 60643(a)(3)) to the State Board of Education adopted content and performance standards (pursuant to Education Code § 60605(a)).</p>	<p>60648</p>
<p>III. Criteria for Retention The local policy approved for Education Code § 48070.5(a) (see I. above) shall identify pupils who should be retained and who are at risk of being retained in their current grades on the basis of either of the following:</p> <ol style="list-style-type: none"> (1) Results of the STAR test and the minimum levels of proficiency recommended by the State Board of Education pursuant to Education Code § 60648 (see II. above). (2) Pupils’ grades and other indicators of academic achievement designated by the district. 	<p>48070.5 (b)</p>
<p>IV. Exception to Retention Criteria If either measure (1) or (2), pursuant to Education Code § 48070.5(b) (see III. above), identifies that a pupil is performing below the minimum standard for promotion, the pupil shall be retained unless the pupil’s regular classroom teacher specifies in writing that retention is not the appropriate intervention. This written determination shall specify</p> <ul style="list-style-type: none"> • The reasons that retention is not appropriate for the pupil and • Recommendations for interventions other than retention that in the opinion of the teacher are necessary to assist the pupil to attain acceptable levels of academic achievement. <p>If the teacher’s recommendation to promote is contingent upon the pupil’s participation in a remediation program, the pupil’s academic performance shall be reassessed at the end of the remediation program and the decision to retain or promote shall be reevaluated at that time.</p> <p>The teacher’s evaluation shall be provided to and discussed with the pupil’s parent or guardian and the school principal before any final determination of pupil retention or promotion.</p>	<p>48070.5 (d)</p>

<p>V. What Shall Be Included in New Local Policy The policy shall:</p> <ul style="list-style-type: none"> • Provide for parental notification when a pupil is identified as being at risk of retention. This notice shall be provided as early in the school year as practicable. The policy shall provide a pupil's parent or guardian the opportunity to consult with the teacher or teachers responsible for the decision to promote or retain the pupil. • Provide a process through which the decision of the teacher to retain or promote a pupil may be appealed. If an appeal is made, the burden shall be on the appealing party to show why the decision of the teacher should be overruled. • Provide that pupils who are at risk of being retained in their current grades be identified as early in the school year, and as early in their school careers, as practicable. • Indicate the manner in which opportunities for remedial instruction will be provided to pupils who are recommended for retention or who are identified as being at risk for retention. • Specify the teacher or teachers responsible for the promotion or retention decision if the pupil does not have a single regular classroom teacher. • Be adopted at a public meeting of the governing board. 	<p>48070.5 (e)</p> <p>48070.5 (f)</p> <p>48070.5 (g)</p> <p>48070.5 (h)</p> <p>48070.5 (d)(2)</p> <p>48070.5 (i)</p>
<p>VI. Exceeding Retention Criteria Nothing in AB 1626 prohibits the retention of a pupil not included in grade levels identified pursuant to Education Code § 48070.5(a) (see I. above), or for reasons other than those specified in Education Code § 48070.5(b)(see III. above), if such retention is determined to be appropriate for that pupil. Nothing in AB 1626 shall be construed to prohibit a governing board from adopting promotion and retention policies that exceed the criteria established in AB 1626.</p>	<p>48070.5 (j)</p>
<p>VII.Mandated Costs If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. if the statewide cost of the claim for reimbursement does not exceed \$1,000,000, reimbursement shall be made from the State Mandates Claims Fund.</p>	<p>17500 Government Code</p>
<p>VIII.Effective Date of Provisions The provisions of AB 1626 shall become operative on the same date that the act takes effect pursuant to the California Constitution (January 1, 1999).</p>	

Key Elements of AB 1639, Mandatory Summer School: Required Intensive Instructional Programs

Key Elements	Education Code Section
<p>I. Supplemental Instruction for Pupils in Grades 2 through 9 Who Have Been Retained In addition to existing requirements to offer summer school programs (adopted pursuant to Education Code § 37252), the governing board of each district maintaining any or all of grades 2 to 9, inclusive, shall offer programs of direct, systematic, and intensive supplemental instruction to pupils enrolled in grades 2 to 9, inclusive, who have been retained pursuant to Education Code § 48070.5 (see AB 1626).</p> <p>A school district may require a pupil who has been retained to participate in supplemental instructional programs. The district shall provide a mechanism for a parent or guardian to decline to enroll his or her child in the program. Attendance in supplemental instructional programs shall not be compulsory within the meaning of Education Code § 48200 (compulsory, full-time education).</p>	37252.5 (a)
<p>II. Programs of Supplemental Instruction for Pupils in Grades 2 through 6 Who Have Low Scores The governing board of each district maintaining any or all of grades 2 to 6, inclusive, may offer programs of direct, systematic, and intensive supplemental instruction to pupils enrolled in grades 2 to 6, inclusive, who have <i>low mathematics, reading, or written expression scores</i> to allow those pupils to achieve proficiency in standards adopted by the State Board of Education.</p> <p>Services offered shall be provided to pupils in the following priority order:</p> <ol style="list-style-type: none"> (1) Pupils who have been recommended for retention or who have been identified as being at risk of retention pursuant to Education Code § 48070.5 or school district policies. (2) Pupils who have been identified as having a deficiency in mathematics, reading, or written expression based on the results of STAR testing (Education Code § 60640-60647). <p>Each school district shall use results from tests administered under the STAR Program (Education Code §§ 60640-60647) or other evaluative criteria to identify eligible pupils pursuant to Education Code § 37252.5 (b).</p>	<p>37252.5 (b)</p> <p>37252.5 (b) (1) (2)</p> <p>37252.5 (e)</p>
<p>III. Pupils Completing Grade 6 or Grade 9 For purposes of this section, a pupil shall be considered to be enrolled in a grade immediately upon completion of the preceding grade. Summer school instruction may also be offered to pupils who were enrolled in grade 6 or grade 9 during the prior fiscal year after the completion of grade 6 or grade 9, respectively.</p>	37252.5 (d)
<p>IV. Legislative Intent It is the intent of the Legislature that pupils who are at risk of failing to meet state adopted standards, or who are at risk of retention, be identified as early in the school year, and as early in their school careers as possible and be provided the opportunity for supplemental instruction sufficient to assist them in attaining expected levels of academic achievement.</p>	37252.5 (h)

<p>V. Program Implementation</p> <ul style="list-style-type: none"> Supplemental educational services pursuant to Education Code § 37252.5 (a) and (b) shall be provided during the summer, after school, on Saturdays, or during intersession, or in a combination of summer school, after school, Saturday, or intersession instruction. Services shall not be provided during the pupil's regular instructional day if doing so would result in the pupil's being removed from classroom instruction in the core curriculum. An intensive remedial program in reading or written expression offered pursuant to AB1639 shall, as needed, include instruction in phoneme awareness, systematic explicit phonics and decoding, word attack skills, spelling and vocabulary, explicit instruction in reading comprehension, writing, and study skills. Each school district shall seek the active involvement of parents and classroom teachers in the development and implementation of supplemental instructional programs provided pursuant to AB1639. 	<p>37252.5 (c)</p> <p>37252.5 (f)</p> <p>37252.5 (g)</p>
<p>VI. Funding Provisions</p> <p>(1) The maximum amount of funding for the purposes of programs offered pursuant to AB 1639 to serve pupils in grades 2 to 6, inclusive, shall not exceed 10 percent of the statewide total enrollment in grades 2 to 6, inclusive, for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year determined pursuant to Education Code § 42239(c) (see SB 1370). Any funding provided for the purposes of AB1639 shall first be used by the district to provide services required pursuant to Education Code § 37252.5 (a) (retained students, see I. above).</p> <p>The funding shall be allocated in the following manner:</p> <p>(A) Notwithstanding Education Code § 42239(e), a school district that offers instruction pursuant to Education Code § 37252.5 (a) and (b) (see I. and II. above) to serve pupils in grades 2 to 6, inclusive, shall be entitled to receive an additional reimbursement in an amount up to 5 percent of the district's total enrollment in grades 2 to 6, inclusive, for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year determined pursuant to Education Code § 42239(c). (see SB 1370)</p> <p>(B) The balance of the appropriation made for the purposes of funding programs offered pursuant to this section to serve pupils in grades 2 to 6, inclusive, shall be allocated for reimbursement for pupil attendance in instruction pursuant to Education Code § 37252.5 (a) and (b) that is in excess of 5 percent of the district's enrollment for the prior year in grades 2 to 6, inclusive, multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year determined pursuant to Education Code § 42239(c). (see SB 1370)</p> <p>(2) If the funds claimed by school districts pursuant to the above subparagraph (B) exceed the available balance of the appropriation made for the purposes of funding programs offered pursuant to the above paragraph (1) after the minimum allocation to eligible districts has been made pursuant to the above subparagraph (A), the allocation of the balance shall be prorated based on each district's share of the total additional hours of instruction offered pursuant to the above subparagraph (B).</p>	<p>37252.5 (i)</p>
<p>VII.Mandated Costs</p> <p>If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. if the statewide cost of the claim for reimbursement does not exceed \$1,000,000, reimbursement shall be made from the State Mandates Claims Fund.</p>	<p>17500</p> <p>Government Code</p>
<p>VIII.Urgency Clause</p> <p>The provisions of AB 1639 took effect as of September 23, 1998.</p>	

Key Elements of SB 1370, Summer School Funding

Key Elements	Education Code Section
I. School District Funding Provides that a school district's maximum funding per pupil beginning in 1998-99 for core summer school shall be capped at 7% of the prior-year total enrollment x 120 hours x hourly rate of \$2.68.	Sec.1 42239(f)(1)
II. Funding Reallocation and Priority Requires the reallocation of any unexpended balance of core summer school funding to fund any shortfall in remedial summer school, as defined in AB 1639. If funding is not needed for this purpose, the unexpended balance shall be reallocated for actual pupil attendance in summer school not to exceed 10% of district enrollment x 120 hours x \$2.68. The section further specifies funding priorities if an unexpended balance still remains in core summer school: <ul style="list-style-type: none"> • Fund current-year deficiencies for remedial summer school. • Fund mandatory summer school in 1997/98 (AB 1639). • Fund general vocational work experience (not to exceed \$100,000 statewide). 	Sec.1 42239(f)(2) 42239(f)(3)(A) 42239(f)(3)(B) 42239(f)(3)(C)
III. Appropriation for Mandatory Summer School Appropriation of an additional \$75,000,000 from the General Fund to support supplemental instruction in AB 1639 (mandatory summer school).	Sec.2
IV. Appropriation for Grades 7-9 Retained or At Risk of Retention Appropriation of an additional \$30,000,000 from the General Fund for remedial instruction to pupils in grades 7-9 who are retained or at risk of retention.	Sec.3
V. (Mega-Item COLA Appropriation of \$94,146,000 from the General Fund for Mega-Item COLA and enrollment growth.)	(Sec.4)
VI. Proposition 98 Deems the appropriations made by this act to be counted toward satisfaction of the minimum funding requirements of Proposition 98.	Sec.5
VII. Urgency Clause The provisions of SB 1370 took effect as of September 29, 1998.	Sec.6

1998-99 "Summer School" Funding and Priorities

I. \$114M - Core Subjects

Statewide priorities of funding:

1. Core - 7% of CBEDS enrollment x 120 hours x \$2.68, per district 42239(e)(2)
2. *Deficiency in required programs for retained pupils in grades 2-9** 42239(f)(2)
3. Core - Up to 10% of CBEDS enrollment, per district 42239(f)(2)
4. Deficiency in Mandated Proficiency 42239(f)(3)(A)
5. Supplement *optional* program for pupils in grades 2-6** 42239(f)(3)(B)
6. Up to \$100K statewide for vocational work experience @ \$2.68 per pupil-hour (funded pro rata if deficiency) 42239(d)(3)

II. \$66.7M - Mandated Proficiency

plus

\$30M - Grades 7-9 required programs for retained pupils* and optional programs for pupils at risk of retention, @ \$2.68 per pupil-hour

SB 1370 (Chap. 942, Stats. of 1998), §3

III. \$75M - *Grades 2-9 required programs for retained pupils* and Grades 2-6 optional programs for pupils recommended for, or at risk of, retention and pupils with low STAR scores in mathematics, reading, and written expression***

SB 1370 (Chap. 942, Stats. of 1998), §2

Statewide cap for *all* pupil groups served in grades 2-6 of 10% of statewide CBEDS enrollment in grades 2-6 x 120 hours x \$2.68 37252.5(i)(1)

District cap on *all* pupil groups served in grades 2-6 of 5% of district CBEDS enrollment in grades 2-6 x 120 hours x \$2.68 37252.5(l)(1)(A)

1. District priorities of service, pupils in grades 2-6:
 - a. Retained 37252.5(a)
 - b. Recommended for, or at risk of, retention 37252.5(b)(1)
 - c. Low STAR score(s) 37252.5(b)(2)
2. If grades 2-6 capped amount fully expended in 1, then district may claim against any remainder of \$75M for more service to pupils in any or all of groups in 2 @ \$2.68 per pupil-hour (funded pro rata if deficiency) 37252.5(l)(1)(B)

Note 1: Items in italics are new for 1998-99.

Note 2: All items in this typeface are Education Code section or legislative Chapter references.

III. Steps In Planning and Implementing New Requirements

The following lists the steps the CDE recommends school districts and county offices of education should take to plan and implement the requirements of AB 1626, AB 1639, and SB 1370:

- 1. Review your current policy and the new legislation** about pupil promotion and retention. This information packet includes a copy of the legislation and a summary of the key elements of the legislation to assist you.
- 2. Review related resources and policies.** The California School Boards Association has developed a sample board policy for promotion/retention/acceleration. For more information, access the CSBA web site at <<http://www.csba.org>> or call (916) 371-4691.
- 3. Involve parents, students, teachers, and administrators** in planning and developing your new policy.
- 4. Develop the new policy** to meet the requirements of the legislation with review by your legal counsel. This packet includes a section entitled "Special Considerations," which summarizes key issues to consider in developing and implementing your policy.
The policy must include:
 - Indicators: STAR or local indicators (local indicators could include STAR)
 - Requirements for promotion/retention at specific grades
 - Process for teachers to determine if retention is not appropriate
 - Parental notification
 - Appeals process for retained pupils
 - Early identification of pupils at risk of being retained
 - Manner in which remedial instruction shall be provided
- 5. Obtain local board approval** of your new policy as soon as reasonably possible. The requirements of AB 1626 become operative on January 1, 1999.
- 6. Develop a comprehensive strategy** for addressing the needs of pupils identified for retention, as being at risk of retention, and as having low scores in mathematics, reading, or written expression. Also plan to coordinate your supplemental instructional efforts with existing and new after school programs such as the After School Learning and Safe Neighborhoods Partnerships Program (SB 1756), federal 21st Century Learning Centers, local parks and recreation programs, and others.

This packet includes a section entitled, "Planning for Supplemental Instruction," to provide guidelines in program planning.
- 7. Implement your plan for pupil identification and provision of supplemental instructional services.**
- 8. Document your identification and supplemental services efforts.** Begin keeping

track of pupils in terms of identification and services received. For apportionment reporting, keep track of the number of hours of supplemental instruction by category by grade level span (see Step 9).

For future evaluative information, the Department also recommends keeping track of pupil promotions and retentions by grade level, ethnic group, gender, type of supplemental instruction provided (e.g., summer school, after-school, Saturdays), and content area.

- 9. Complete and submit the J18/19 form consistent with current apportionment reporting. Report supplemental instruction hours according to the following categories:**
 - A. Required Programs for Retained Pupils**
 - Grades 2-6
 - Grades 7-9
 - B. Optional Programs for Pupils Recommended for, or at Risk of, Retention**
 - Grades 2-6
 - Grades 7-9
 - C. Low STAR Score(s)**
 - Grades 2-6

Section IV. G. of this packet provides additional information about apportionment reporting.

- 10. Adjust the identification and supplemental services for the following school year.**

Evaluate your local policy and revise as necessary.

IV. Special Considerations Before Developing Promotion/Retention Policy and Implementing a Districtwide Plan

A. Legislative Counsel Opinion, October 1, 1998

AB 1626 requires the governing board of each school district and county board of education to approve a policy on promotion and retention of pupils according to certain specifications. Because the legislation's criteria for identifying pupils who should be retained is ambiguous within Education Code § 48070.5 (b) and § 48070.5 (d), the Legislative Counsel of California provided an opinion on the issue (Opinion #21610, October 1, 1998). The criteria according to § 48070.5 (b) is:

- The local policy shall identify pupils who should be retained and who are at risk of being retained in their current grade **on the basis of either of the following:**
 - (1) Results of the STAR test and the minimum levels of proficiency recommended by the State Board of Education pursuant to Education Code § 60648.
 - (2) Pupil's grades and other indicators of academic achievement designated by the district.

Education Code § 48070.5 (d) brings about the ambiguity through the following:

- **If either measure (1) or (2), pursuant to Education Code § 48070.5(b), identifies that a pupil is performing below the minimum standard for promotion, the pupil shall be retained** unless the pupil's regular classroom teacher determines in writing that retention is not the appropriate intervention

The ambiguity concerns whether the criteria for retention are required to be based on both (1) **and** (2) or whether local boards have the flexibility to base the criteria solely on either (1) **or** (2). The particular question to the Legislative Counsel focused on whether local boards could base the criteria solely on (2).

The opinion stated that local boards may, if they wish, base the identification of pupils who should be retained solely on the pupil's grades and other indicators of academic achievement designated by the district and not on the results of STAR assessments and the minimum levels of proficiency recommended by the State Board of Education pursuant to Education Code § 60648.

This information packet includes a copy of the Legislative Counsel opinion for your information. (See also Section VI., Questions and Answers #1, of this packet.)

B. STAR/Measurement Issues

Under AB 1626, the Superintendent of Public Instruction has the responsibility to recommend to the State Board of Education the levels of pupil performance on STAR that define the minimum level of proficiency needed for satisfactory performance at the next grade level (Education Code § 60648). These performance levels shall be

adopted only when the STAR test is aligned with State Board adopted content and performance standards (Education Code § 60648). The State Board of Education has already adopted content standards in reading, mathematics and language arts and is scheduled to adopt performance standards in reading, writing, and mathematics by July 15, 1999.

An important report for your consideration is *High Stakes: Testing for Tracking, Promotion and Graduation*, recently released by the National Academy of Sciences. The Report makes six recommendations concerning the use of tests to make decisions about promotion and retention.

- Scores from large-scale assessments should **never** be the **only** sources of information used to make a promotion or retention decision. No single source of information--whether test scores, course grades, or teacher judgments--should stand alone in making promotion decisions. Test scores should always be used in combination with other sources of information about student achievement.
- Tests and other information used in promotion decisions should adhere, as appropriate, to psychometric standards for placement and to psychometric standards for certifying knowledge and skill.
- Tests and other information used in promotion decisions may be interpreted as evidence of mastery of material already taught or as evidence of student readiness for material at the next grade level. In the former case, test content should be representative of the curriculum at the current grade level. In the latter case, test scores should predict the likely educational effects of future placements--whether promotion, retention in grade, or some other intervention options.
- If a cut-score is to be employed on a test used in making a promotion decision, the quality of the standard-setting process should be documented and evaluated--including the qualification of the judges employed, the method or methods employed, and the degree of consensus reached.
- Students who fail should have the opportunity to retake any test used in making promotion decisions, meaning that tests used in making promotion decisions should have alternate forms.
- Test users should avoid a simple either/or option to promote or retain, when high-stakes tests and other indicators show that students are doing poorly in school, selecting, instead, strategies combining early identification and effective remediation of learning problems.

Keeping the above in mind, another consideration that will affect the usability of the STAR data for retention decisions is the need to ensure that test results from STAR testing are received in the school in time to make promotion decisions before the end of the school year. Changing the timing of the STAR testing cycle would require legislative action that would not be possible for the 1999 testing cycle.

The National Academy of Sciences Report argues that the validity and fairness of test score interpretations used in promotion decisions can be enhanced by the following:

- identifying at-risk students early so they can be targeted for extra help,
- providing students with multiple opportunities to demonstrate their knowledge through repeated testing with alternate forms or other appropriate means, and
- taking into account other relevant information about individual students.

C. Relationship to Standards-Based Accountability System and Proficiency Requirements

Under the state's new Standards-Based Accountability System, all California school districts are expected to develop content standards, comprehensive assessments, and grade-level performance standards and, using those standards and assessments, to determine if their pupils are meeting specific grade-level standards. The CDE collects and uses that information to evaluate state and local programs and to identify schools in need of special assistance or monitoring or worthy of special recognition.

One of the primary requirements of the Standards-Based Accountability System is the use of multiple measures in determining each pupil's level of proficiency in each content area. This requirement is based upon the assumption that judgments about a pupil's proficiency should be based upon the broadest possible array of evidence. In addition, the federal Title I law requires that multiple measures be part of each state's assessment system. For the 1997-98 school year, California districts were required to use the STAR results as well as other information, such as school or district assessments, classroom assessments, or grades, to judge each pupil's performance against grade-level standards. In developing policies concerning the identification of pupils for retention or supplemental instruction, districts are encouraged to build on the work they have already begun with standards-based accountability using multiple measures.

The State Board of Education has adopted the labels for the levels of performance that they want described through performance standards. These performance levels are the same as those used by the National Assessment of Educational Progress: advanced, proficient and basic. However, the crucial work of describing student performance at each of these levels and examples of illustrative student work is not required to be done until July 15, 1999.

Districts will need to think through the relationship between their existing definition of grade level standards as defined in their Standards-Based Accountability System, the future performance standards that will be adopted by the State Board of Education, and the criteria for "retention" and "at risk of retention" as defined in their promotion and retention policy. The figure on the following page depicts the possible relationship between these three sets of standards or definitions.

D. English Learners

Decisions regarding the promotion or retention of English Learners require special considerations. With the passage of Proposition 227, state law now allows programs to be designed primarily to teach English Learner pupils English first and academic content second. Districts that offer such programs are cautioned that it is clearly inappropriate **to retain** English Learners who have failed to meet academic standards in areas in which they have been provided only limited instruction.

It would not be unreasonable, on the other hand, to consider many English Learners to be **at risk of retention** based solely on the challenges they face in acquiring proficiency and mastering subject area content in English. Providing English Learners with supplemental instruction of the types envisioned by AB 1626, AB 1639, and SB 1370 can be a key intervention to ensure that these pupils eventually attain grade-level proficiency and beyond.

E. Special Education

Districts receiving special education funding are required to comply with both the Individuals with Disabilities Education Act (20 USC Section 1400 et seq.) and Section 504 of the Rehabilitation Act (29 USC Section 794 et seq.). It is possible that special education pupils can be retained, but only under certain circumstances.

The following information should be used as a guidepost when considering the decision about promotion and retention for a student in special education:

1. The Individualized Education Plan (IEP) is a written document that includes:
 - The present levels of the pupil's educational performance;
 - The measurable annual goals, including benchmarks, or short term objectives related to
 - A. Meeting the pupil's needs that result from the pupil's disability to enable the pupil to be involved in and progress in the general curriculum and
 - B. Meeting each of the pupil's other educational needs that result from the pupil's disability;
 - The specific special educational instruction and related services and supplementary aids and services to be provided to the pupil, or on behalf of the pupil, and a statement of the program modifications or supports for school personnel that will be provided for the pupil to do the following
 - A. To advance appropriately toward attaining the annual goals
 - B. To be involved and progress in the general curriculum.
2. Also included in the IEP are appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved.
3. For pupils in grades 7 to 12 inclusive: Any alternative means and modes necessary for the pupil to meet or exceed proficiency standards for graduation in accordance with differential proficiency standards.
4. The IEP shall also include the determination of the IEP team as to whether differential proficiency shall be developed for the pupil. If differential proficiency standards are developed, the IEP shall include these standards.

F. Title I

Each district receiving federal Title I funds, including Migrant Title I funds, may only receive these funds if state and local funds will be used in participating schools to provide services that, taken as a whole, are at least comparable to services that the district is providing to schools not participating in Title I. The district must also ensure that federal funds supplement, and not supplant, other funds allocated to each school.

These two fiscal provisions are commonly referred to as "comparability" and "supplement, not supplant" and are important to consider when implementing supplemental instructional services. The Title I law, (20 USC 6322), regulations (34 CFR Section 200.63), and published policy guidance contain considerably more detail about these provisions and how to test them for compliance. Please consult your district or county categorical programs director for legal and policy references and for assistance in understanding and applying these provisions.

If identification and supplemental instruction are provided equitably across all schools in a district, it is unlikely there will be a problem with either of these Title I fiscal provisions. If, however, the district is considering identification and

provision of services differentially among schools, these provisions should be reviewed carefully, and the district or county categorical programs director should be consulted.

G. Funding

For purposes of apportionment funding, the Education Finance Division (EFD) will release appropriate reporting forms in time for the Second Principal Apportionment in June, 1999.

CDE expects the reporting for apportionment for summer school pursuant to the new legislation will include the following categories:

- A. Required Programs for Retained Pupils
 - Grades 2-6
 - Grades 7-9
- B. Optional Programs for Pupils Recommended for, or at Risk of, Retention
 - Grades 2-6
 - Grades 7-9
- C. Low STAR Score(s)
 - Grades 2-6

Local education agencies will be required to report summer school hours to EFD by May 1, 1999, for the Second Principal Apportionment in June, 1999. District officials will be required to certify the reported hours just as summer school hours and average daily attendance (ADA) are certified for existing programs. Summer school is funded in arrears. At this time, CDE does not intend to change the reporting and payment schedules for summer school.

H. Multi-Track, Year-Round Education (MTYRE) Schools

Despite the facility shortages that characterize most MTYRE schools, there are a number of ways supplemental instruction can be delivered during intersessions:

1. Adding portable classrooms to sites for the use of supplemental instruction only. This assumes that sites have room for additional portables and funding to provide them.
2. Using vacant classrooms at other district sites.
3. For high school programs, operating off-campus through a nearby community college.
4. Using administrative flexibility to use distance-learning, community-based education, and mentorships.

I. Research on the Effects of Retention

Do students benefit from retention? A great deal of research has been conducted on the effects of retention. A recent comprehensive summary of the retention research was conducted by the National Academy of Sciences and reported in *High Stakes: Testing for Tracking, Promotion and Graduation*. It concluded, "Research data indicate that simply repeating a grade does not generally improve achievement (Holmes, 1989; House, 1989); moreover, it increases the dropout rate (Gampert & Opperman, 1988; Grissom & Shepard, 1989; Olson, 1990; Anderson, 1994; Darling-Hammond & Falk, 1995; Luppescu et al., 1995; Reardon, 1996)."

In a recent study which cited positive effects of retention, Alexander, Entwisle and Dauber (1994) followed a random sample of 775 of Baltimore City Public Schools students who entered first grade in 1982. By the end of eighth grade, 486 students remained. Of those, 53% had repeated at least one grade and 14% had been retained two or more times. The authors conclude that retention benefits students academically. However, a detailed re-analysis of those findings by Shepard, Smith and Marion (1996) described flaws in the gain score analysis used by Alexander et al. and concluded that, based on the data, repeating a grade neither helped nor hurt students in the Baltimore City Schools.

Anderson (1994) analyzed national data from the National Longitudinal Study of Youth and found that students who repeated a grade were 70 percent more likely to drop out of high school than students who were not retained, even after controlling for the effects of background characteristics. Similar conclusions were reported by Grissom and Shepard (1989) when they examined the long-term effects of retention on dropping out of school. They concluded that when student background, sex and achievement are controlled, retained students are up to 30 percent more likely to drop out of school by ninth grade than those promoted.

The implications of these research findings are that powerful and early instructional interventions should be employed to avoid retention. Good "first teaching" and appropriate supplemental instruction as described in Section V. of this packet should be the focus of district and school implementation of pupil promotion and retention policies.

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- Anderson, D.K. (1994) *Paths Through Secondary Education: Race/Ethnic and Gender Differences*. Unpublished doctoral thesis, University of Wisconsin-Madison.
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University.

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Reardon, S. (1996) Eighth Grade Minimum Competency Testing and Early High School Dropout Patterns. Paper presented at the Annual Meeting of the American Educational Research Association. New York, NY.

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V. Planning for Supplemental Instruction

The major purpose of the new pupil promotion and retention legislation is to improve student learning and support students who are at risk of failure. The funding available under this program offers educators an opportunity to rethink how they can provide supplemental services and additional help for those students who are retained, at risk of being retained, or have low scores in mathematics, reading, or written expression.

Every child should be provided comprehensive instruction to achieve academic success. Each child should have full access to the core curriculum in all curriculum areas--reading/language arts, math, science, history/social science, visual and performing arts, physical education and health--including content knowledge, application of basic skills, problem solving, and comprehension. Of particular importance is to actively identify, support, and motivate pupils who, for whatever reason, begin to fall behind. These pupils may require extra help in attaining grade-level standards, and it is imperative that they be provided immediately the additional intensive, focused learning support services and supplemental instruction that can ensure their success.

Educational failure is a crisis for any child. Programs of supplemental instruction designed for children at risk of failure should reflect a state of urgency on behalf of the child. Supplemental instruction should incorporate powerful, research-based practices to accelerate academic growth of low-performers and close the gap between achieving and low-achieving children as rapidly as possible. Such instruction should engage students appropriate to their skill levels and involve them in activities that are challenging yet provide a reasonably high rate of success. Finally, it is important to encourage, support, and motivate these pupils who may become easily discouraged as they work to “catch up.”

Based on local governing board policies, school districts shall offer programs of direct, systematic, and intensive supplemental instruction. Supplemental services (primarily in areas of reading, English language arts, and mathematics) should be provided so that each eligible pupil is given the adequate tools to earn promotion and attain high academic standards. In addition, the legislature has defined certain areas of instruction in reading and written expression that must be included, as needed, in an intensive supplemental program. These areas are phoneme awareness, systematic explicit phonics and decoding, word attack skills, spelling and vocabulary, explicit instruction of reading comprehension, writing, and study skills (Education Code § 37252.5 (f)).

Districts need to design summer school and other supplementary instructional programs that have the greatest promise of success by incorporating the following:

- planning a program of instruction for each student based on diagnostic information
- setting clear academic goals for each student, and regularly monitoring progress
- ensuring the district’s best teachers teach in supplementary instructional programs

through professional incentives and rewards

- providing all supplementary instructional program teachers with staff development to address the needs of students identified for service
- providing both the necessary facilities and transportation
- allowing for various models (e.g. intersession in year-round schools, and intensive four-week courses) which capitalize on existing school programs and resources.
- evaluating the effectiveness of supplementary instructional programs

Below are topics to consider when planning and implementing supplemental instructional efforts. When developing and implementing these programs it is important to think about the linkage and utilization of existing resources and services such as Title I, other categorical programs, and the ongoing involvement and commitment of the family.

- Integrating supplemental instruction into comprehensive district and school improvement planning
- Teacher recruitment and staffing
- Professional development
- Designing the instructional program
- Comprehensive needs assessment of students
- Student performance standards
- Student diagnostic assessment and reassessment
- Community involvement
- Family literacy programs and services
- Strategies to meet transportation and facilities needs

The Department plans to describe promising practices used within California and other states as models of supplementary instruction. This information will be provided on the CDE web page over the next several months.

VI. Questions and Answers

Pupil Identification/Eligibility

- 1. May a local school board adopt a policy pursuant to AB 1626 that bases the identification of pupils who should be retained solely on the “pupil’s grades and other indicators of academic achievement designated by the district” [EC § 48070.5(b)] and not on the results of the STAR testing and the minimum levels of proficiency recommended by the State Board of Education per EC § 60648 and § 48070.5(d)?**

According to the Legislative Counsel of California opinion of October 1, 1998, the local school board may adopt, on and after January 1, 1999, a policy pursuant to EC § 48070.5 that bases identification of pupils who should be retained solely on the pupil’s grades and other indicators of academic achievement designated by the district and not on the results of the STAR testing and the minimum levels of proficiency recommended by the State Board of Education per EC § 60648.

- 2. What is the definition of (1) “pupils who should be retained,” (2) “pupils who are at risk,” and (3) “pupils who achieve proficiency in meeting standards” ?**

- (1) “Pupils who should be retained” will be defined in local promotion and retention policies pursuant to AB 1626.
- (2) “Pupils who are at risk” is not specifically defined in AB 1626. The definition of “at risk” will be described in local school district policies.
- (3) “Pupils who achieve proficiency in meeting standards” is also not specifically defined in AB 1626 and is also expected to be described in local school district policies.

- 3. Do requirements of AB 1626 and AB 1639 apply to special education pupils and English learners?**

Special education pupils and English learners are not excluded from this legislation.

- 4. If pupils in grade 4 through grade 9 pass grade-level proficiency in reading but do not pass in mathematics, should they be identified for retention or being at risk of retention?**

The answer will depend on the local policy adopted by the district, unless future follow-up legislation or regulations should stipulate differently.

Timelines/Deadlines

5. What is the legal start date of the program?

AB 1639 and SB 1370 are urgency statutes and take effect immediately as of the date the legislation was filed with the Secretary of State. AB 1639 was filed September 23, 1998, and SB 1370 was filed September 29, 1998. AB 1626 is not an urgency statute and becomes effective January 1, 1999.

6. Is there a deadline for when the new local retention/promotion policy needs to be adopted?

AB 1626 specifies that the governing board of each school district and each county board of education shall, in those applicable grade levels, approve a policy regarding the promotion and retention of pupils. The provisions of AB 1626 become operative as of January 1, 1999, and school districts and county offices of education will need to develop and approve their new policy at a reasonable time thereafter.

CDE expects that local boards of education will not have their policies completely adopted for several months. It is important that school districts and county offices of education take the time to involve their respective education communities and to carefully consider the implications of their policy decisions. Local education agencies are encouraged to develop new policies in conformity with AB 1626 as soon as reasonably possible.

7. When is it likely that the State Board of Education will adopt (1) performance standards and (2) minimum levels of proficiency on STAR as required by AB 1626?

Education code § 60605 (a)(1)(B) requires the State Board of Education by July 15, 1999, to adopt statewide performance standards in the core curriculum areas of reading, writing, and mathematics based on the recommendations made by a contractor or contractors. It is unknown at this time when the State Board of Education may adopt minimum levels of proficiency on STAR to meet the requirements of AB 1626.

(1) Adoption of performance standards and (2) adoption of minimum levels of proficiency on STAR as required by AB 1626 are two different activities, and the adoption of performance standards may or may not result in the same levels as those adopted for proficiency related to AB 1626.

School Eligibility

8. Do the requirements of the AB 1626, AB 1639, and SB 1370 legislation apply to charter schools?

No. Charter schools are exempt from the requirement of a policy. They are not eligible for summer school funding but may offer a summer school program on behalf of the sponsoring district provided they meet all of the same requirements as non-charter schools courses.

Legislative

- 9. Will there be regulations or clean-up legislation? If so, when will they be ready?**

AB 1626, AB 1639, and SB 1370 do not require regulations. There is currently no plan to develop clean-up regulations or legislation.

- 10. Will this program be evaluated?**

There is no provision in the legislation for an evaluation to be conducted nor is there funding in the budget for such an activity. However, the CDE is requesting funds for 1999-00 to begin an evaluation in this area.

Implementation

- 11. What is the relationship of California's Standards Based Accountability System to local retention policies and practices pursuant to AB 1626 and AB 1639?**

Districts are encouraged to use methods in their identification procedures for promotion and retention which are consistent with their local standards-based accountability system, but recognize that different pupil competency categories may utilize different cut-points. (See also Section IV.C. in this information packet.)

- 12. What data will districts be required to report to CDE and when will it need to be reported?**

For funding purposes, districts will need to complete and submit the J18/19 consistent with current apportionment reporting. Report supplemental instruction hours according to the following categories:

A. Required Programs for Retained Pupils

- Grades 2-6
- Grades 7-9

B. Optional Programs for Pupils Recommended for, or at Risk of, Retention

- Grades 2-6
- Grades 7-9

C. Low STAR Score(s)

- Grades 2-6

For future evaluative information, the Department also recommends keeping track of pupil promotions and retentions by grade level, ethnic group, gender,

type of supplemental instruction provided (e.g., summer school, after-school, Saturdays), and content area.

13. In multi-track, year-round education schools in which facilities are limited, how can districts meet the needs for supplemental instruction pursuant to AB 1639?

In spite of the facility shortages that characterize most MTYRE schools, there are a number of ways supplemental instruction can be delivered during intersessions:

1. Adding portable classrooms to sites for the use of supplemental instruction only. This assumes that sites have room for additional portables and funding for them.
2. Using vacant classrooms at other district sites.
3. For high school programs, operating off-campus through a nearby community college.
4. Using administrative flexibility to use distance-learning, community-based education, and mentorships.

14. According to Education Code § 37252.5 (c), supplemental services shall not be provided during the pupil's regular instructional day if doing so would result in the pupil's being removed from classroom instruction in the core curriculum. May our district provide supplemental services during the regular instructional day by offering intensive supplemental instruction in place of the regular physical education class?

No. Core academic areas have been defined as essentially any academic subjects the district offers during the regular year, including physical education and driver training.

Funding

15. When will districts receive apportionment claim forms for funding available through the legislation?

The Education Finance Division (EFD) expects to distribute to school districts apportionment claim forms in time for the second principle apportionment. EFD plans to make payment for the new reporting areas at P2 (June 25, 1999).

VII. State Contacts for Assistance

Districts or schools having questions regarding pupil promotion and retention and summer school and other supplemental instruction programs may contact any of the following staff for assistance.

Assessment/ STAR/ Accountability

STAR/ Assessments

Jim Grissom.....(916) 657-5466.....jgrissom@cde.ca.gov

Standards

Marion Miller.....(916) 657-4393.....mmiller@cde.ca.gov

Standards-Based Accountability System

Dale Carlson.....(916) 654-6797.....dcarlson@cde.ca.gov

English Learners

Wendy Harris.....(916) 657-3351.....wharris@cde.ca.gov

Fred Dobb.....(916) 657-4384.....fdobb@cde.ca.gov

Financial Issues

Apportionment Claims, Methods Used in Computing Counts for Funding

Marcia Davey.....(916) 322-5906.....mdavey@cde.ca.gov

Instructional Implementation

Elementary Education

Debbie Lott.....(916) 657-2678.....dlott@cde.ca.gov

Secondary Education

Beth Breneman.....(916) 657-5472.....bbrenema@cde.ca.gov

Alternative Education

Sue Bennett.....(916) 322-5015.....sbennett@cde.ca.gov

Title I/ Categorical Programs

Hanna Walker, Director....(916) 657-5492.....hwalker@cde.ca.gov

Lucille Gonzales.....(916) 657-4555.....lgonzale@cde.ca.gov

Tomas Lopez.....(916) 657-3803.....tlopez@cde.ca.gov

Year-Round Education Program and School Facilities

Thomas Payne.....(916) 322-6249.....tpayne@cde.ca.gov

Legal Issues

John Gilroy.....(916) 323-8478.....jgilroy@cde.ca.gov
(916) 657-2453

Legislative Issues

Daniel Alvarez, Deputy....(916) 657-5360.....dalvarez@cde.ca.gov

Erika Hoffman.....(916) 657-2280.....ehoffman@cde.ca.gov

Research on Pupil Promotion and Retention

Cathy George.....(916) 657-4319.....cgeorge@cde.ca.gov

Special Education

Alice Parker, Director.....(916) 445-4602.....aparker@cde.ca.gov
Fay Sorenson.....(916) 327-3671.....fsorenso@cde.ca.gov
Paul Hinkle.....(916) 327-3514.....phinkle@cde.ca.gov

Web Page Information

Larry Boese.....(916) 657-3583.....lboese@cde.ca.gov
Chris Hartnett.....(916) 657-3702.....chartnet@cde.ca.gov

General Information

Pat McCabe.....(916) 657-3740.....pmccabe@cde.ca.gov
Cathy George.....(916) 657-4319.....cgeorge@cde.ca.gov
Jan Volkoff.....(916) 657-4282.....jvolkoff@cde.ca.gov

For all other questions, you may send an e-mail message to the following address and your question(s) will be routed to the appropriate contact: ctiner@cde.ca.gov

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BILL TEXT

CHAPTER 742

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AMENDED IN ASSEMBLY MARCH 24, 1998

INTRODUCED BY Assembly Members Wayne, Alquist, Frusetta, and Leach
(Principal coauthor: Assembly Member Baldwin)

(Coauthors: Assembly Members Bowler, Brewer, Campbell, House,
Kuykendall, Leonard, Miller, Morrissey, Pacheco, Prenter, Richter,
and Runner)

(Coauthors: Senators Lockyer, Vasconcellos, and Watson)

JANUARY 5, 1998

An act to add Sections 48070.5 and 60648 to the Education Code,
relating to education.

LEGISLATIVE COUNSEL'S DIGEST

AB 1626, Wayne. Pupil promotion and retention.

(1) Existing law requires the governing board of each school district and each county superintendent of schools to adopt policies regarding pupil promotion and retention, and requires a pupil to be promoted or retained only as provided according to those policies.

This bill would, in addition to the policies adopted pursuant to those provisions, require the governing board of each school district and each county board of education to approve a policy regarding the promotion and retention of pupils between specified grades, and would require that policy to provide for the identification of pupils who should be retained or who are at risk of being retained in their current grade level on the basis of specified factors. The bill would require the policy to be based on various other considerations.

By imposing new duties on school districts regarding the adoption

of this policy, the bill would impose a state-mandated local program.

(2) Existing law, known as the Leroy Greene California Assessment of Academic Achievement Act, requires the Superintendent of Public Instruction to design and implement a statewide pupil assessment program that includes, among other things, a plan for producing individual pupil scores based on both the achievement test that is part of the Standardized Testing and Reporting (STAR) Program and the statewide assessment of pupil performance in the core curriculum areas.

This bill would require the Superintendent of Public Instruction to recommend, and the State Board of Education to adopt, levels of pupil performance for the achievement tests administered under the STAR Program in reading, English language arts, and mathematics for each grade level, and would require that those performance levels identify and establish the level of performance that is deemed to be the minimum level required for satisfactory performance in the next grade.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) It is crucial for the success of the public school system and for the greatest achievement of each individual pupil that all educators hold, and act upon, high expectations for the academic achievement of every pupil.

(b) With the development of rigorous academic standards in each discipline for each grade level, it is the expectation of the Legislature and the Governor that all public school educators will do all that is necessary so that each pupil meets high academic standards.

(c) Therefore, the Legislature and the Governor declare that school districts must address the academic deficiencies of every pupil.

SEC. 2. Section 48070.5 is added to the Education Code, to read:

48070.5. (a) In addition to the policy adopted pursuant to Section 48070, the governing board of each school district and each county board of education shall, in those applicable grade levels, approve a policy regarding the promotion and retention of pupils between the following grades:

- (1) Between second grade and third grade.
- (2) Between third grade and fourth grade.
- (3) Between fourth and fifth grade.
- (4) Between the end of the intermediate grades and the beginning of middle school grades which typically occurs between sixth grade and seventh grade, but may vary depending upon the grade configuration of the school or school district.
- (5) Between the end of the middle school grades and the beginning of high school which typically occurs between eighth grade and ninth grade, but may vary depending upon the grade configuration of the school or school district.

(b) The policy shall provide for the identification of pupils who should be retained and who are at risk of being retained in their current grade level on the basis of either of the following:

(1) The results of the assessments administered pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 and the minimum levels of proficiency recommended by the State Board of Education pursuant to Section 60648.

(2) The pupil's grades and other indicators of academic achievement designated by the district.

(c) The policy shall base the identification of pupils pursuant to subdivision (b) at the grade levels identified pursuant to paragraph (1) and (2) of subdivision (a) primarily on the basis of the pupil's level of proficiency in reading. The policy shall base the identification of pupils pursuant to subdivision (b) at the grade levels identified pursuant to paragraphs (3) through (5) of subdivision (a) on the basis of the pupil's level of proficiency in reading, English language arts, and mathematics.

(d) (1) If either measure identified in paragraph (1) or (2) of subdivision (b) identifies that a pupil is performing below the minimum standard for promotion, the pupil shall be retained in his or her current grade level unless the pupil's regular classroom teacher determines in writing that retention is not the appropriate intervention for the pupil's academic deficiencies. This written determination shall specify the reasons that retention is not appropriate for the pupil and shall include recommendations for interventions other than retention that in the opinion of the teacher are necessary to assist the pupil to attain acceptable levels of academic achievement. If the teacher's recommendation to promote is contingent upon the pupil's participation in a summer school or interim session remediation program, the pupil's academic performance shall be reassessed at the end of the remediation program, and the

decision to retain or promote the pupil shall be reevaluated at that time. The teacher's evaluation shall be provided to and discussed with the pupil's parent or guardian and the school principal before any final determination of pupil retention or promotion.

(2) If the pupil does not have a single regular classroom teacher, the policy adopted by the school district shall specify the teacher or teachers responsible for the promotion or retention decision.

(e) The policy shall provide for parental notification when a pupil is identified as being at risk of retention. This notice shall be provided as early in the school year as practicable. The policy shall provide a pupil's parent or guardian the opportunity to consult with the teacher or teachers responsible for the decision to promote or retain the pupil.

(f) The policy shall provide a process whereby the decision of the teacher to retain or promote a pupil may be appealed. If an appeal is made, the burden shall be on the appealing party to show why the decision of the teacher should be overruled.

(g) The policy shall provide that pupils who are at-risk of being retained in their current grade be identified as early in the school year, and as early in their school careers, as practicable.

(h) The policy shall indicate the manner in which opportunities for remedial instruction will be provided to pupils who are recommended for retention or who are identified as being at risk for retention.

(i) The policy adopted pursuant to this section shall be adopted at a public meeting of the governing board of the school district.

(j) Nothing in this section shall be construed to prohibit the retention of a pupil not included in grade levels identified pursuant to subdivision (a), or for reasons other than those specified in subdivision (b), if such retention is determined to be appropriate for that pupil. Nothing in this section shall be construed to prohibit a governing board from adopting promotion and retention policies that exceed the criteria established in this section.

SEC. 3. Section 60648 is added to the Education Code, to read:

60648. The Superintendent of Public Instruction shall recommend, and the State Board of Education shall adopt, levels of pupil performance on achievement tests administered pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 in reading, English language arts, and mathematics at each grade level. The performance levels shall identify and establish the level of performance that is deemed to be the minimum level required for satisfactory performance in the next grade. These levels of performance shall only be adopted after the achievement tests have been aligned, pursuant to paragraph (3) of subdivision (a) of Section 60643, to the content and performance standards adopted by the State Board of Education pursuant to subdivision (a) of Section 60605.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains

costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

Attachment B
AB 1639 (Chapter 743, Statutes of 1998)
Mandatory Summer School: Required Intensive Instructional Programs

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BILL TEXT

CHAPTER 743
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AMENDED IN ASSEMBLY APRIL 16, 1998

INTRODUCED BY Assembly Members Sweeney, Baldwin, Granlund, Honda, Keeley, Knox, Lempert, Machado, Pacheco, Perata, Scott, Shelley, Strom-Martin, Thomson, Villaraigosa, and Wayne and Senator Polanco
(Coauthors: Assembly Members Kuykendall, Miller, Morrissey, Prenter, and Runner)

JANUARY 5, 1998

An act to add Section 37252.5 to the Education Code, relating to summer school, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1639, Sweeney. Schools: mandatory summer school: required intensive instructional programs.

(1) Existing law requires the governing board of each school district maintaining any or all of grades 7 to 12, inclusive, to offer summer school instructional programs for pupils enrolled in grades 7 to 12, inclusive, who were assessed as not meeting the school district's adopted standards of proficiency in basic skills.

This bill would require the governing board of each school district maintaining any or all of grades 2 to 6, inclusive, to offer programs of direct, systematic, and intensive supplemental instruction to pupils enrolled in grades 2 to 6, inclusive, who have been retained pursuant to specified provisions of law. The bill would authorize a school district to require a pupil who has been

retained to participate in that supplemental instructional program. The bill would require the school district to provide a mechanism whereby a parent or guardian may decline to enroll his or her child in the program. The bill would also authorize the governing board of each school district maintaining any or all of grades 2 to 6, inclusive, to offer programs of direct, systematic, and intensive supplemental instruction to pupils with low mathematics, reading, or written expression scores to allow those pupils to achieve proficiency in standards adopted by the State Board of Education. The bill would prescribe the priority for offering those instructional services to pupils and would prescribe criteria for funding these programs. By imposing new duties on school districts regarding the provision of supplemental instruction programs, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 37252.5 is added to the Education Code, to read:

37252.5. (a) The governing board of each district maintaining any or all of grades 2 to 9, inclusive, shall offer programs of direct, systematic, and intensive supplemental instruction to pupils enrolled in grades 2 to 9, inclusive, who have been retained pursuant to Section 48070.5, as added by Assembly Bill 1626 of the 1997-98 Regular Session. A school district may require a pupil who has been retained to participate in supplemental instructional programs. Notwithstanding the requirements of this section, the school district shall provide a mechanism for a parent or guardian to decline to enroll his or her child in the program. Attendance in supplemental instructional programs shall not be compulsory within the meaning of Section 48200.

(b) The governing board of each district maintaining any or all of grades 2 to 6, inclusive, may offer programs of direct, systematic,

and intensive supplemental instruction to pupils enrolled in grades 2 to 6, inclusive, with low mathematics, reading, or written expression scores to allow those pupils to achieve proficiency in standards adopted by the State Board of Education. Services offered pursuant to this subdivision shall be provided to pupils in the following priority order:

(1) Pupils who have been recommended for retention or who have been identified as being at risk of retention pursuant to Section 48070.5, as added by Assembly Bill 1626 of the 1997-98 Regular Session, or school district policies.

(2) Pupils who have been identified as having a deficiency in mathematics, reading, or written expression based on the results of the tests administered under the Standardized Testing and Reporting Program established pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33.

(c) Supplemental educational services pursuant to subdivisions (a) and (b) shall be offered during the summer, after school, on Saturdays, or during intersession, or in a combination of summer school, after school, Saturday, or intersession instruction. Services shall not be provided during the pupil's regular instructional day if it would result in the pupil being removed from classroom instruction in the core curriculum.

(d) For purposes of this section, a pupil shall be considered to be enrolled in a grade immediately upon completion of the preceding grade. Summer school instruction may also be offered to pupils who were enrolled in grade 6 during the prior fiscal year after the completion of grade 6. For ninth grade pupils identified in subdivision (a), summer school instruction may also be offered to pupils who were enrolled in grade 9 during the prior fiscal year after the completion of grade 9.

(e) Each school district shall use results from tests administered under the Standardized Testing and Reporting Program, established pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 or other evaluative criteria to identify eligible pupils pursuant to subdivision (b).

(f) An intensive remedial program in reading or written expression offered pursuant to this section shall, as needed, include instruction in phoneme awareness, systematic explicit phonics and decoding, word attack skills, spelling and vocabulary, explicit instruction of reading comprehension, writing, and study skills.

(g) Each school district shall seek the active involvement of parents and classroom teachers in the development and implementation of supplemental instructional programs provided pursuant to this section.

(h) It is the intent of the Legislature that pupils who are at risk of failing to meet state adopted standards, or who are at risk of retention, be identified as early in the school year, and as early in their school careers as possible and be provided the opportunity

for supplemental instruction sufficient to assist them in attaining expected levels of academic achievement.

(i) (1) The maximum amount of funding for the purposes of programs offered pursuant to this section to serve pupils in grades 2 to 6, inclusive, shall not exceed 10 percent of the statewide total enrollment in grades 2 to 6, inclusive, for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year determined pursuant to subdivision (c) of Section 42239, as added by Senate Bill 1370 of the 1997-98 Regular Session (hereafter Section 42239). Any funding provided for the purposes of this section shall first be used by the district to provide services required pursuant to subdivision (a), and shall be allocated in the following manner:

(A) Notwithstanding subdivision (e) of Section 42239, a school district that offers instruction pursuant to subdivisions (a) and (b) to serve pupils in grades 2 to 6, inclusive, shall be entitled to receive an additional reimbursement in an amount up to 5 percent of the district's total enrollment in grades 2 to 6, inclusive, for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year determined pursuant to subdivision (c) of Section 42239.

(B) The balance of the appropriation made for the purposes of funding programs offered pursuant to this section to serve pupils in grades 2 to 6, inclusive, shall be allocated for reimbursement for pupil attendance in instruction pursuant to subdivisions (a) and (b) that is in excess of 5 percent of the district's enrollment for the prior year in grades 2 to 6, inclusive, multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year determined pursuant to subdivision (c) of Section 42239.

(2) If the funds claimed by school districts pursuant to subparagraph (B) of paragraph (1) of this subdivision exceed the available balance of the appropriation made for the purposes of funding programs offered pursuant to this section in paragraph (1) of this subdivision after the minimum allocation to eligible districts has been made pursuant to subparagraph (A) of paragraph (1) of this subdivision, the allocation of the balance shall be prorated based on each district's share of the total additional hours of instruction offered pursuant to subparagraph (B) of paragraph (1) of this subdivision.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless

otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement the intensive supplemental instruction programs established by this act as expeditiously as possible, it is necessary that this measure take effect immediately.

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BILL TEXT

CHAPTER 942
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AMENDED IN SENATE MARCH 24, 1998

INTRODUCED BY Senator Polanco and Assembly Members Villaraigosa and Sweeney

(Principal coauthors: Assembly Members Escutia and Washington)
(Coauthors: Senators Lee and Solis)
(Coauthors: Assembly Members Keeley, Leach, Murray, Ortiz, Shelley, Washington, and Wayne)

JANUARY 5, 1998

An act to amend Section 42239 of the Education Code, relating to education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1370, Polanco. Education: summer school funding.

(1) Existing law requires the governing board of each school district that maintains any or all of grades 7 to 12, inclusive, to offer summer school instructional programs for pupils assessed as not meeting the district's adopted standards of proficiency in basic skills. Under existing law, school districts receive apportionments for summer school based generally on summer school attendance, adjusted for various factors. Under existing law, generally, a school district's maximum entitlement for reimbursement for pupil attendance in summer school programs offered for mathematics, science, English as a second language, or other core academic areas designated by the Superintendent of Public Instruction is an amount equal to 5% of the district's total enrollment for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year, as determined pursuant to specified provisions.

This bill would, commencing the in the 1998-99 fiscal year, except as otherwise provided by specified provisions, make a school district's maximum entitlement for reimbursement for pupil attendance in those summer school programs an amount equal to 7% of the district's total enrollment for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year.

The bill would require the Superintendent of Public Instruction to reallocate to any school district any unexpended balance of the appropriations made for the current fiscal year for core academic summer school programs, as prescribed, to fund any shortfall in funding needed to provide supplemental instructional services offered under this bill. The bill would require the superintendent, if funds are not needed for that purpose, to reallocate to any school district any unexpended balance for reimbursement for actual pupil attendance in specified summer school programs. The bill would prohibit any district from receiving reimbursement for pupil attendance in summer school programs in excess of 10% of the district's enrollment for the prior fiscal year, multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year.

The bill would appropriate \$75,000,000 from the General Fund to the Superintendent of Public Instruction for allocation to school districts for the purposes of supplemental instructional programs established pursuant to specified provisions added by AB 1639 of the 1997-98 Regular Session. The bill would appropriate \$30,000,000 from the General Fund to the State Department of Education to augment a specified item of appropriation in the Budget Act of 1998 to provide remedial instruction in pupils in grades 7 to 9, inclusive, who have been retained or identified as being at risk of retention pursuant to specified provisions. The bill would appropriate \$94,146,000 from the General Fund to the Superintendent of Public Instruction for allocation to school districts, county offices of education, and other agencies receiving funding under a specified item of appropriation in the Budget Act of 1998 for providing cost-of-living adjustments and enrollment growth funding, to be distributed to each program that is funded under that item in a specified amount. For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the funds appropriated by the bill would be deemed to be "General Fund revenues appropriated to school districts," as defined, and included with the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined, for the 1998-99 fiscal year.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 42239 of the Education Code is amended to read:

42239. For the 1984-85 fiscal year and each fiscal year thereafter, the county superintendent shall compute an amount for each school district's summer school attendance in the following manner:

(a) Divide the amount received on account of average daily attendance pursuant to Section 42238.6 in the 1983-84 fiscal year by the 1983-84 fiscal year hours of attendance. This amount shall be increased annually by the percentage increase granted to school districts for base revenue limit increases.

(b) Multiply the amount computed in subdivision (a) by the lesser of the 1983-84 fiscal year hours of summer school attendance or the actual fiscal year hours of summer school attendance computed pursuant to paragraph (1) of subdivision (d).

(c) If the fiscal year hours of summer school attendance computed pursuant to subdivision (d) exceed the hours of summer school attendance specified in subdivision (b), multiply the increased hours by one dollar and fifty cents (\$1.50). This amount shall be increased annually by the percentage increase granted to school districts for base revenue limit increases.

(d) Commencing in the 1984-85 fiscal year, summer school attendance shall be the sum of paragraphs (1), (2), and (3):

(1) The hours of attendance in the categories identified in Section 42238.6 as it read in the 1983-84 fiscal year.

(2) Any summer school hours of attendance for mathematics, science, English as a second language, or other core curriculum areas designated by the Superintendent of Public Instruction.

(3) Hours of general, vocational work experience education, if the school district certifies to the Superintendent of Public Instruction that all courses identified in paragraphs (1) and (2) have been offered to meet student demand and if the statewide demand, up to the amounts specified in subdivision (e), as amended by the annual Budget Act, and the amounts specified in the appropriation made for the purposes of this section in the annual Budget Act, has been met for all courses identified in paragraphs (1) and (2). The total statewide amount apportioned for general vocational work experience summer school programs shall not exceed one hundred thousand dollars (\$100,000) in any fiscal year. If the total statewide entitlement pursuant to this paragraph exceeds one hundred thousand dollars (\$100,000), the State Department of Education shall apportion funds on a pro rata basis. As used in this section, reimbursement of "hours of general vocational work experience" shall be based on the number of hours of attendance for that work experience course, at a rate equal to that for a course in paragraph

(2) of the same number of credits.

(e) (1) Except as otherwise provided in paragraph (3) of subdivision (d), a school district's maximum entitlement for reimbursement for pupil attendance in summer school programs offered pursuant to paragraphs (2) and (3) of subdivision (d) shall be an amount equal to 5 percent of the district's total enrollment for the prior fiscal year times 120 hours, times the hourly rate for the current fiscal year determined pursuant to subdivision (c).

(2) A district may enroll more than 5 percent of its students, or may enroll students for more than 120 hours per year in summer school programs offered pursuant to paragraphs (2) and (3) of subdivision (d), as long as the total state apportionment to the district for those programs does not exceed the amount computed pursuant to paragraph (1). A district shall earn its entitlement at the per pupil hourly rate pursuant to subdivision (c).

(f) (1) Commencing in the 1998-99 fiscal year, except as otherwise provided in paragraph (3) of subdivision (d), a school district's maximum entitlement for reimbursement for pupil attendance in summer school programs offered pursuant to paragraphs (2) and (3) of subdivision (d) shall be an amount equal to 7 percent of the district's total enrollment for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year determined pursuant to subdivision (c).

(2) Notwithstanding paragraph (1) of subdivision (e), or any other provision of law, the Superintendent of Public Instruction shall reallocate to any school district any unexpended balance of the appropriations made for the current fiscal year for core academic summer school programs, pursuant to paragraph (2) of subdivision (d) to fund any shortfall in funding needed to provide supplemental remedial services required pursuant to subdivision (a) of Section 37252.5, as added by Assembly Bill 1639 of the 1997-98 Regular Session. If funds are not needed for that purpose, the Superintendent of Public Instruction shall reallocate to any school district any unexpended balance for reimbursement for actual pupil attendance in summer school programs authorized under paragraph (2) of subdivision (d). In no event shall any district receive reimbursement for pupil attendance in summer school programs in excess of 10 percent of the district's enrollment for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year.

(3) After any reallocation is made pursuant to paragraph (2), the Superintendent of Public Instruction shall reallocate any unexpended balance of the appropriation specified in the annual Budget Act for the purpose of this section in the following priority:

(A) For the purposes of funding any deficiencies, for the current fiscal year, in remedial summer school programs authorized pursuant to paragraph (1) of subdivision (d).

(B) For the purposes of funding supplemental educational services

for the current fiscal year authorized pursuant to subdivision (b) of Section 37252.5, as added by Assembly Bill 1639 of the 1997-98 Regular Session.

(C) For the purposes of funding general vocation work experience education for the current fiscal year authorized pursuant to paragraph (3) of subdivision (d).

(g) Notwithstanding any other provision of law, classes may be convened pursuant to this section at the hours and for the length of time during the schoolday, and at the period and for the length of time during the school year, as may be determined by the governing board of the school district.

SEC. 2. The sum of seventy-five million dollars (\$75,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for allocation to school districts for the purposes of supplemental instructional programs established pursuant to Section 37252.5 of the Education Code, as added by Assembly Bill 1639 of the 1997-98 Regular Session.

SEC. 3. The sum of thirty million dollars (\$30,000,000) is hereby appropriated from the General Fund to the Department of Education in augmentation of funds appropriated in Schedule (a) of Item 6110-104-0001 of Section 2.00 of the Budget Act of 1998 (Chapter 324, Statutes of 1998). These funds shall be used to provide remedial instruction to pupils in grades 7 to 9, inclusive, who have been retained or identified as being at risk of retention pursuant to Section 48070.5, as added by Assembly Bill 1626 of the 1997-98 Regular Session.

SEC. 4. The sum of ninety-four million one hundred forty-six thousand dollars (\$94,146,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for allocation to school districts, county offices of education, and other agencies receiving funding from funds appropriated pursuant to Item 6110-230-0001 of Section 2.00 of the Budget Act of 1998 (Chapter 324, Statutes of 1998) for providing cost-of-living adjustments and enrollment growth funding, to be distributed to each program that is funded under Item 6100-230-0001 in an amount that is proportionate to the base funding level of the program in the 1997-98 fiscal year, excluding Partnership Academies and instructional materials for kindergarten and grades 1 to 12, inclusive.

SEC. 5. For the purpose of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by Sections 2, 3, and 4 of this act shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code for the 1998-99 fiscal year, and shall be included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code for the 1998-99 fiscal year.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement the summer school programs funded by this act as expeditiously as possible, it is necessary that this act take effect immediately.

Attachment D

**Legislative Counsel Opinion
October 1, 1998**